

**Summary of Testimony of
Commissioner Linda Breathitt
Federal Energy Regulatory Commission
Before the
Subcommittee on Energy and Air Quality
Committee on Energy and Commerce
United States House of Representatives**

May 1, 2001

We must acknowledge that the market disruptions and price volatility in California and Western energy markets will require both short-term and longer-term solutions to the current supply and demand imbalances. The proposed Electricity Emergency Relief Act provides for a number of such remedies. I have concentrated my testimony on those provisions that require action by the Commission or that have implications for the Commission. Consequently, my remarks are focused on those sections and I do not comment on sections of the legislation that affect others. In general, I am supportive of the proposals laid out in the proposed legislation. I believe that the Commission's actions in last week's order on market monitoring and mitigation are also consistent with the proposed legislation.

The Electricity Emergency Relief Act calls for a general study of transmission constraints and would authorize substantial expenditures to remove the Path 15 constraint in California. While I support both of these needed actions, I believe that a planned approach to expansion of the natural gas infrastructure is also necessary. Going forward, I believe that the Commission should have siting authority for new interstate electric transmission infrastructure as shortages of transmission will no longer be single-state issues. While this legislation does not provide for such authority, I believe that a federal role in transmission siting throughout the country would be helpful, particularly in instances such as this.

For several years now, the Commission has focused its attention on finding market solutions to problems confronting the wholesale electricity markets. While the situation in California and the West has certainly challenged this resolve, I have remained steadfast in my belief that market-oriented solutions are preferable to those which might further hinder the development of competitive wholesale electricity markets.

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Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to appear before you today to discuss the energy crisis in California and the worsening conditions of electric markets throughout the West. My testimony begins by describing an order issued by the Commission last week. Then, my testimony discusses the provisions of the Electricity Emergency Relief Act that has implications for the Commission.

Just last week the Commission issued an important order addressing the price volatility in California and the West. San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al., 95 FERC ¶ 61,115 (2001) (Price Mitigation Order).

Through this order the Commission established a plan for market monitoring and price mitigation in California that will become effective later this month. This order fashioned a market-oriented approach which addresses the price volatility in California's real time energy markets while not discouraging the necessary investment in California's transmission and generation infrastructure. In addition, the Commission's order established several demand side measures that should promote conservation.

The Price Mitigation Order also instituted an investigation, under section 206 of the Federal Power Act, into the rates, terms, and conditions of sales for resale within the Western Systems Coordinating Council (WSCC). This investigation will target the transactions and prices in the WSCC in a manner that does not conflict with the Commissions' actions in California. I believe that the requirements of this order are consistent with the objectives of the Electricity Emergency Relief Act.

I will only comment on those sections of the Electricity Emergency Relief Act that affect the Commission's authorities and responsibilities. In general, I am supportive of the proposed legislation.

Section 101 would require the Commission to establish a clearinghouse system to facilitate agreements under which wholesale purchasers would forego purchasing electric energy that they are entitled to buy under contractual arrangements. The compensation paid for foregone purchases is deemed to be just and reasonable. The Commission must report to Congress by January 1, 2003, on the section's effect and whether Congress should extend the section's authority.

The concept of creating a marketplace where wholesale purchasers who forego entitlements to purchase power can be compensated at market rates for their foregone purchases is a good one. In fact, in a March 14, 2001 order, the Commission authorized,

under our existing authority, wholesale customers who reduce purchases to sell these reductions at market-based rates. Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States, 94 FERC ¶ 61,272 (2001) (Order Removing Obstacles).

Section 101 as drafted is not clear what type of clearinghouse system the Commission is expected to establish. There may be practical difficulties with the Commission establishing such a clearinghouse system within 30 days of enactment. As for declaring that all market prices for foregone purchases are just and reasonable, this may eliminate tools that the Commission would otherwise use to prevent gaming and affiliate abuse.

Section 102 would establish a program allowing any electric consumer, i.e. a retail customer, of an electric utility in the WSCC to sell at market prices the portion of electric load the customer is willing to forego out of the total amount it is entitled to consume. The section specifies that these sales would not be jurisdictional under the Federal Power Act.

As with Section 101, the concept of this section is laudable and is similar to a measure the Commission has taken in its Order Removing Obstacles. However, the Commission had assumed such sales would be jurisdictional where the customer sold its

reduced consumption at wholesale, whereas this section removes Commission jurisdiction over such transactions.

This section also imposes upon the Commission the responsibility to determine the amount of power a consumer is entitled to consume where it is not specifically limited by contract or regulation. This could be a difficult and burdensome determination to make, depending upon how many different customers require this determination.

Section 103 requires the Secretary of Energy and the Commission to undertake a joint study of electric power transmission congestion. This section also mandates that a plan be developed to relieve electric constraints that reduce the efficiency of the transmission grid within the United States and with Canadian and Mexican electric transmission systems.

I am supportive of a planned approach to the development of electric infrastructure. I also believe that such a planned approach is needed to address natural gas infrastructure needs. The issue of whether adequate takeaway capacity exists on intrastate pipelines in California needs to be addressed.

This section of the proposed legislation is unclear as to what Congress will do with the infrastructure study once it is completed. As I stated before this subcommittee on

March 20, 2001, I believe that the Commission needs to have siting authority for new electric interstate transmission infrastructure, because shortages of transmission are not just state issues. The electric transmission grids of the Western states are inextricably linked. I believe that transmission siting has become an interstate commerce issue that needs input from the Commission.

Section 107 would prohibit the Commission and other governmental entities from requiring a sale of electric energy or natural gas "unless there is a guarantee that, as determined by the Commission, is sufficient to ensure that the seller will be paid the full purchase price when due."

The principle of this section, that generators should not be forced to sell to customers that will not be able to pay them, is sound. However, if interpreted too broadly, it may have the unintended effect of limiting the amount of resources that could be made available to assist the West with its supply deficiencies. I note that the Commission included a measure in our recent price mitigation order for California that requires all sellers with Purchasing Generator Agreements with the California Independent System Operator (ISO) as well as non-public utility generators located in California to offer all their available power in real time during all hours. There should be sufficient discretion provided in the legislation that such sales into the California market

could be required as long as there are adequate assurances of payment from a creditworthy party.

Section 108 provides that, if the State of California or any entity established by the State owns or operates transmission facilities acquired from a Commission-regulated public utility, the State or such entity will be subject to Commission regulation with respect to such facilities to the same extent and in the same manner as would be the public utility itself.

As I testified before this Subcommittee on March 20, 2001, I believe the issue is not so much who owns the transmission system in California or elsewhere. The real issue is that the transmission system, whether public or private, needs to be part of a regional grid. Only independent, regionally operated grids will ensure competitive electricity markets that are open, efficient, reliable, and free from discrimination. What's truly important is that California's transmission system remain as much a part of the Western regional grid as it is today. This section is one way of ensuring that the facilities continue to provide open-access services as part of a regional grid.

Section 301 requires the Commission to promulgate a standard license article to permit increased generation at licensed hydroelectric facilities to alleviate electric supply, generating, or system reliability emergencies. The proposed legislation provides that,

upon notice to the Commission and after consultation with the appropriate resource agencies, a licensee may operate with a temporary modification of any minimum flow requirement during the emergency. Such actions would only be taken upon request by the Governor of the affected State.

My support for this approach is tempered with a concern that any actions taken should not negatively impact the long-term health of the environment. It is important not to create additional problems through the lack of measured consideration and foresight.

Section 306 requires the Commission to establish an RTO for the region covered by the WSCC, upon the request of at least 10 of 13 Western Governors.

I view the formation of RTOs in the West as important for the efficient operation and enhanced reliability of the transmission grid. I believe that RTOs will reduce barriers to access to the transmission grid and will address many of the remaining impediments to competitive wholesale electric markets. If there was broad-based support by the Governors of the region for a West-wide RTO, I would be supportive of such action.

In closing, for several years now, the Commission has focused its attention on finding market solutions to problems confronting the wholesale electricity markets. While the situation in California and the West has certainly challenged this resolve, I

have remained steadfast in my belief that market-oriented solutions are preferable to those which might further hinder the development of competitive wholesale electricity markets. I believe that, for the most part, the Electricity Emergency Relief Act provides the type of market-oriented solutions that I can accept.

Thank you.